IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 18527 of 2004

Between:

1 The Director General, I.C.A.R., Krishi Bhavan, New Delhi.
2 The Director (P), I.C.A.R., Krishi Bhavan, New Delhi.
3 The Director, C.T.R.I., Rajahmundry.
4 The Finance and Accounts Officer, C.T.R.I.,Rajahmundry.

..... PETITIONERS

AND

Dr.P.Venkateswarlu, s/o P.Veeraiahgaru,
Central Tobacco Research Institute, Rajahmundry, E.G.District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of certiorari, calling for the records, pertaining to O.A.No.1351 of 2002, order dt.29-01-2004 on the file of Central Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abintio, null.

Counsel for the Petitioners: MR.A.RAJASHEKAR REDDY

SC for Central Government

Counsel for the Respondent: ----------

The Court at the stage of admission made the following

ORDER **(per the Hon'ble Sri Justice Goda Raghuram)**:

Aggrieved by the order of Central Administrative Tribunal, Hyderabad Bench, dated 29-01-2004 in O.A.No.1351 of 2002, this Writ Petition is filed.

The respondent, a Scientist (Senior Scale) with the Central Tobacco Research Institute, Rajahmundry, filed the O.A. for a declaration that the orders of the first petitioner herein, in the office note dated 12-06-2002 and office order dated 05-10-2001are illegal and to restore him to the scale of pay as on 30-09-2001 and for refund of all the amounts recovered from his pay.

The respondent herein after acquiring M.Sc. in Agriculture and a Doctorate was appointed as a Scientist in the petitioners' organization-the Indian Council of Agricultural Research (ICAR) on 20-02-1995 and posted to the ICAR, Research Complex for North-East Hill Region, Nagaland Centre. His pay was fixed at Rs.2425-75-2800-100-4000/- against the scale of Rs.2200-75-2800-100-4000/- after giving three advance increments for acquiring Ph.D. before recruitment. The 5th Pay Commission recommended revision of pay scales with effect from 01-01-1996. Adopting these recommendations, the scale of pay of the respondent was fixed at Rs.9100-275-13500/- against the pay scale of Rs.8000-275-13500/-, in the grade of Scientist, after giving him four advance increments, when he was serving at Nagaland. He was thereafter transferred to C.T.R.I., Rajahmundry in September, 2000. He continued to be paid the same pay scale with the advance increment benefits upto September 2001. However, the third

petitioner issued an office order dated 05-10-2001 refixing the respondent's pay at Rs.8,275/- in the same scale i.e., Rs.8000-275-13500/-. Recovery from the respondent's pay was also commenced from October, 2001. The respondent submitted a number of representations seeking stay of the recoveries, but without response. Thereafter, the third petitioner informed the respondent, by the office note dated 12-06-2002, that the earlier refixation of pay i.e., at the point of Rs.9,100/- in the pay scale of Rs.8000-13500/- was erroneous and therefore, his pay was refixed at Rs.8,275/-. In this regard, the petitioners referred to a clarification obtained from the ICAR, New Delhi, that the four advance increments are available only to those who possess Ph.D. at the time of recruitment, as per ICAR letter dated 27-02-1999 and only to such of those scientists who joined the Council on or after 01-01-1996. As the respondent had joined service prior to that date i.e., 22-09-1995 he is not entitled to the said benefit is an implication of the petitioners' response to the respondent's representations.

While allowing the O.A., the Tribunal directed the petitioners to re-examine the issue and address the anomaly that results on the stand taken by the writ petitioners namely that the applicant-respondent, who is senior to those scientists who were appointed after 01-01-1996 and equally possess qualification of Ph.D., would be drawing a lesser pay as compared to the later recruitees, if the cut off date of 01-01-1996 was applied and directed the petitioners to take appropriate measures to rectify the anomaly. As regards the recovery, the Tribunal interdicted the same as it was done without a notice and opportunity to the respondent. In a succinct and well-addressed opinion the Tribunal held as under:

> "7. Whereas, the ICAR are perfectly entitled to give an interpretation of the recommendations of the Vth Pay Commission with respect to the incentives and the date from which it could be made applicable. However, the fact remains that this interpretation would lead to anomaly of juniors appointed with Ph.D., qualifications after 1.1.1996 drawing higher pay than that of their seniors appointed with the same qualifications. Therefore, this Tribunal considers it necessary to direct the respondents to re-examine the issue in the light of this situation and take such appropriate measures, as would be necessary, to rectify the said anomaly and to extend the benefits of any such measures of rectification of the anomaly to the applicant also. As regards recovery, the principles of natural justice would have required an opportunity to be given to the applicant before passing orders of such recovery unilaterally without the applicant being heard in the matter. However, I find that the applicant had preferred several representations in this matter and the same also therefore, would have been taken into consideration before informing the applicant in the matter about the letter of the first respondent issued in office note

No.F.1(B)/02-Adm.I, dated 12.6.2002 and office order No.F.37/2001-02/Admn.II, dated 5.10.2001. However, as regards the interpretation resulting in an anomalous situation of juniors appointed after 1.1.1996 with Ph.D., Degree taking over their seniors with the same qualifications with respect to fixation of pay, would not be fair or just or in conformity with the principles of natural justice. The respondents, as directed above, are therefore, directed to take expeditious steps to rectify the above anomaly within a period of three months and extend the benefit of such appropriate measures to the applicant also as and when a decision in the matter has been taken by them. In case, once it has become necessary as per such decision to refund the excess amounts recovered from the pay of the applicant, the respondents are directed to do so accordingly within a period of two months from the date of the final steps taken in the matter."

On account of the petitioners adopting the cut off date of 01-01-1996 irrationally and regardless of the factual circumstances which require a flexible approach, a situation has been brought about whereby persons recruited prior to 01-01-196 with a Ph.D., qualification would be drawing lesser pay than those appointed subsequent to 01-01-1996 with the same qualifications viz., a Ph.D. A senior equally qualified, would thus be drawing a lesser pay than a junior. This anomaly is not an anomaly, which is the result of different scales of pay being admitted to a fresh recruitee on the recommendations of the 5th Pay Commission. The anomaly is the result of applying the component of advance increments for possession of Ph.D., selectively only to fresh recruitees. This was considered arbitrary by the Tribunal.

We find no reasons for rejecting this conclusion of the Tribunal. There is no error either in the application of law or exercise of discretion by the Tribunal, warranting interference in the Writ Petition. The writ Petition is without merits and does not commend admittance.

Accordingly, the Writ Petition is dismissed at the stage of admission. No costs.

_____

J. CHELAMESWAR, J

_____

GODA RAGHURAM, J

11th October, 2004

lsn/mrk

To

1 The Director General, I.C.A.R., Krishi Bhavan, New Delhi.
2 The Director (P), I.C.A.R., Krishi Bhavan, New Delhi.
3 The Director, C.T.R.I., Rajahmundry.
4 The Finance and Accounts Officer, C.T.R.I.,Rajahmundry.

5. Two CD copies.